

MINUTE ITEM

4. (OIL AND GAS LEASING PROGRAM - GEN. DATA, OIL & GAS.)

Following presentation of Calendar Item 25 attached, Mr. Hortig explained that it was prepared with the understanding that any directive which might be given by the Commission would be restricted to staff operations only, without any formal action by the Commission with respect to oil and gas lease offers prior to September 11, 1957.

Mr. Paul Home of the Standard Oil Company of California urged the Commission to withhold taking any official action on oil and gas lease offers until after September 11, 1957, indicating that the legality of doing so had been studied by the general counsel for Standard, and that while they were in fairly close agreement with the opinion of the Attorney General, it was felt that it could be hazardous to proceed with public hearings at this time; that any official actions should be delayed until after September 11 to make certain that any titles given could not possibly be subject to doubt. It was suggested that the staff might proceed with the determination of areas to be offered, the preparation of lease forms, and the preparation of revised rules and regulations.

Mr. Kirkwood indicated that he was in agreement with Mr. Home, and stated that he would prefer to have the Consulting Board (see Minute Item 5) available before taking any official action or offering any parcels for lease. He brought up the question of whether the notice of offer, under A.B. 47, would have to cover the final area to be included in the lease, or whether a larger area could be specified initially, subject to modification at the time a lease offer is made. Deputy Attorney General Jay L. Shavelson expressed the opinion that the Commission's authority to lease will be clarified under A.B. 47.

Mr. Home stated that the counsel for Standard Oil Company of California were of the opinion that the leasing procedures which had been followed under the Cunningham-Shell Tidelands Act in the past were not subject to question or criticism.

Mr. William R. Gardner of the Humble Oil & Refining Company asked how much time would be lost if no formal action were taken by the Commission until after September 11, and was informed by Mr. Hortig that at a theoretical maximum it would be about 55 days and in actual practice probably not more than a month.

Attachment

Calendar Item 25 (4 pages)

CALENDAR ITEM

SUPPLEMENTAL

25.

(OIL AND GAS LEASING PROGRAM - GEN. DATA., OIL & GAS.)

On June 13, 1957 (Minute Item 5, page 3183), the Commission suggested that an informal opinion of the office of the Attorney General be requested as to the legal precepts involved in the initiation of any administrative procedures relating to oil and gas leasing prior to the possible effective date of A.B. 47 adopted at the 1957 Legislative Session.

An informal opinion has been received from the office of the Attorney General on the following question:

"Could the Commission proceed at this time with all procedures precedent to an oil and gas lease offer under the Public Resources Code in anticipation of publication of such offer after September 11, 1957, or are there limitations as to procedures which may not be initiated prior to September 11, 1957, to be effective?"

A copy of the opinion is attached as Exhibit "A". The opinion, in summary, states that prior to the effective date of A.B. 47 the Commission may issue permits for geological and geophysical surveys, may conduct hearings as provided by Section 6873.2 of the Public Resources Code, and may issue notices provided by that section preparatory to such hearings. The Commission is advised not to make any determinations prior to September 11, 1957, based upon any hearings conducted under Section 6873.2, Public Resources Code, and not to proceed with any lease offers except pursuant to new hearings under Section 6873.2, Public Resources Code.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE STAFF TO PROCEED WITH THE CONSIDERATION OF OIL AND GAS LEASE OFFERS UNDER THE PUBLIC RESOURCES CODE IN CONFORMANCE WITH THE LIMITATIONS OUTLINED IN THE INFORMAL OPINION OF THE OFFICE OF THE ATTORNEY GENERAL DATED JULY 10, 1957.

Attachment
Exhibit "A"

EXHIBIT "A"

STATE OF CALIFORNIA

Los Angeles 12

Inter-Departmental Communication

To: State Lands Commission
302 State Building
Los Angeles 12, California

Date: July 10, 1957

File No.

Attention: Col. Rufus W. Putnam
Executive Officer

Subject:

From: Department of Justice

An informal opinion of our office is requested on the following question which is based upon the assumption that Assembly Bill 47 will be duly signed by the Governor and will become effective upon September 11, 1957:

Could the Commission proceed at this time with all procedures precedent to an oil and gas lease offer under the Public Resources Code in anticipation of publication of such offer after September 11, 1957, or are there limitations as to procedures which may not be initiated prior to September 11, 1957, to be effective?

Our opinion may be summarized as follows:

- (1) The Commission may, at this time, issue permits for geological or geophysical surveys and the taking of cores and other samples from the tide and submerged lands.
- (2) The Commission may, prior to September 11, 1957, conduct hearings as provided by Public Resources Code Section 6873.2, and may issue notices provided by that section preparatory to such hearings.
- (3) The Commission is advised not to make any determinations prior to September 11, 1957, based upon hearings conducted under Section 6873.2.
- (4) The Commission is advised to conduct new hearings under Section 6873.2 in situations where hearings have already been held but no leases have been issued.

(1) Public Resources Code Section 6826 relates to the issuance of permits for geological and geophysical surveys and the taking of cores and other samples from tide and submerged lands under the jurisdiction of the Commission. This section is amended by Assembly Bill 80 which has been signed by the Governor and is presently in effect as an urgency measure. Permits issued prior to September 11, 1957, will be unaffected by Assembly Bill 47 if this Bill becomes law. The State Lands Division may receive and process data from permittees and from independent sources, preparatory to making recommendations to the Commission relating to the issuance of leases, and advantageous lease provisions and bidding procedures.

(2) Public Resources Code Section 6873.2 requires that notice be published by the Commission prior to offering tide or submerged lands for lease. It provides for a hearing, which is mandatory upon timely request by an affected city or county, and discretionary in the absence of such a request. The purpose of this hearing is to require the Commission to take into consideration the effect of any proposed lease upon the adjacent shoreline recreational or residential areas. Assembly Bill 47 does not alter the first paragraph of Section 6873.2, which sets the time within which an affected city or county may request a hearing, and specifies the notice required for such hearings. Assembly Bill 47 does modify or clarify the second paragraph of Assembly Bill 47, which specifies the procedure to be followed by the Commission subsequent to such a hearing. The third paragraph of Section 6873.2, which specifies the criteria by which the Commission is to determine whether the issuance of a lease would have a detrimental effect upon the adjacent shoreline, remains unaltered by Assembly Bill 47.

It is our opinion that the changes in the second paragraph of Section 6873.2 do not modify the objectives or nature of the hearing itself. We believe therefore that the Commission could, prior to September 11, conduct hearings under Section 6873.2, and could issue notices of proposed leasing and notices of hearings, preparatory to such hearings. In issuing these notices and conducting such hearings, the Commission would be acting pursuant to portions of Section 6873.2 which remain unaltered by Assembly Bill 47. Government Code Section 9605 provides in part as follows:

"Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; and the omitted portions are to be considered as having been repealed at the time of the amendment. ..."

Thus, if Assembly Bill 47 is duly signed by the Governor, these portions of Section 6873.2 will be deemed to have been in effect without interruption and without re-enactment on September 11, 1957.

(3) As stated above, that portion of Section 6873.2 which relates to procedures subsequent to a hearing under that section is modified or clarified by Assembly Bill 47. It is recommended therefore, in the event the Commission conducts a hearing under this section prior to September 11, 1957, that it make no determinations such as those referred to in the second paragraph of this section until at least 30 days after September 11th.

(4) We are informed that the Commission has conducted hearings pursuant to Section 6873.2 as to lands which have not as yet been leased. In light of the above mentioned procedural changes in this section and in light of the possibility of changed circumstances since the dates of such hearings, it is recommended that the Commission conduct, as to these lands, new hearings which comply fully with the requirements of Assembly Bill 47 if this Bill becomes law.

STANDARD B & P "NOTAR" ®

JLS:lx

/s/ Jay L. Shavelson

JAY L. SHAVELSON
Deputy Attorney General